IN THE

Supreme Court of the United States.

OCTOBER TERM, 1952.

No. 24.

GULF RESEARCH & DEVELOPMENT COMPANY, WELEX JET SERVICES, INC., AND BYRON JACKSON CO.,

Petitioners,

v.

THE HONORABLE PAUL LEAHY, UNITED STATES DISTRICT JUDGE, AND SCHLUMBERGER WELL SURVEYING CORPORATION,

Respondents.

PETITION FOR REHEARING.

Petitioners pray that this Court grant rehearing of its order entered October 27, 1952, affirming by an equally divided Court the judgments entered below in this case and *Cardox Corporation v. C-O-Two Fire Equipment Co.*, No. 25, October Term, 1952.

REASONS FOR GRANTING REHEARING.

The order as to which rehearing is requested has the effect of increasing the confusion among the lower courts not only as to whether Section 1391(c) of revised Title 28, U. S. Code, supplies a definition of the residence of a defendant corporation for suits for patent infringement

brought under Section 1400(b); but also as to whether mandamus is appropriate to review a venue decision.

This Court most recently has passed upon the effect of an affirmance by an equally divided Court in *United States v. Pink*, 315 U. S. 203, 216 (1941) wherein it was said as to such an affirmance that:

> "While it was conclusive and binding upon the parties as respects that controversy * * *, the lack of an agreement by a majority of the Court on the principles of law involved prevents it from being an authoritative determination for other cases. Hertz v. Woodman, 218 U. S. 205, 213, 214 (1909)."

Thus the order as to which rehearing is requested has produced the following specific anomalies:

(a) It affirms the holding of the Court of Appeals for the Third Circuit in this case that mandamus is not appropriate to review a venue decision [R. 44], while affirming the squarely conflicting holding of the Court of Appeals for the Seventh Circuit in *Cardox v. C-O-Two* that mandamus *is* appropriate for such purpose [R. 23 in No. 25];

(b) It affirms the holding (by a divided court) of the Court of Appeals for the Seventh Circuit in *Cardox v. C-O-Two* that Section 1391(c) of revised Title 28, U. S. Code, does not supply a definition of the residence of a corporate defendant for Section 1400(b) thereof [R. 21 in No. 25], while leaving undisturbed the squarely conflicting holding (by a unanimous court) of the United States Court of Appeals for the Fifth Circuit in *Dalton v. Shakespeare*, 196 F. 2d 469 (1952) that Section 1391(c) *does* supply such definition; and

(c) It affirms the holding of the United States Court of Appeals for the Third Circuit in this case that the venue question may be raised on appeal after final judgment on the merits [R. 44], while, in effect, denying such a privilege to the petitioner in *Cardox v. C-O-Two.*

If the Court should be of the view that a rehearing on the venue question still would result in an equally divided Court, petitioners respectfully suggest that this Court now could remand this case to the Court of Appeals for the Third Circuit with instructions to hear argument on, and to consider and decide, the venue question en banc. Compare *United States ex rel. Robinson v. Johnson*, 316 U. S. 649 (1962).

CONCLUSION.

For the reasons set forth above, it is urged that rehearing of this Court's order of October 27, 1952, be granted; or, in the alternative, that this case be remanded to the Court of Appeals for the Third Circuit with instructions to hear argument on, and to consider and decide, the venue question en banc.

Respectfully,

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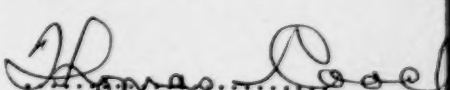
Attorneys for Petitioners.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.



Attorney for Petitioner.